

SUBJECT: Wages paid under public contracts

COMMITTEE: Labor and Employment: committee substitute recommended

VOTE: 6 ayes--Criss, Shine, Evans, Fraser, Oyard, Turner  
1 nay--Mowery  
1 absent--P. Moreno

WITNESSES: For--Jackie St. Clair, Texas Building and Construction  
Trades Council; Jim Sewell, Associated General  
Contractors  
Against--David Reagan, Texas Municipal League

BACKGROUND: State and political subdivisions that contract  
for public work are required to determine the  
prevailing wage rate in the locality where the  
contracted work is to be done. Contractors and  
subcontractors are required to pay workers hired for  
the contracted work no less than the determined  
prevailing wage rate. Contractors are charged a \$10  
per-worker penalty for each day a lower wage is paid.  
The public entity contracting for services is  
authorized to withhold and retain all penalties  
collected after an investigation.

DIGEST: CSHB 430 would raise the penalty for paying less  
than the prevailing wage in public contracts from \$10  
to \$60 per worker, per day and would specify that the  
money be used to offset administrative costs for  
collecting penalties and other amounts due.

The bill would allow the public entity contracting for  
services to retain, after 14 days notice and  
opportunity for a hearing, the difference in wages owed  
to each worker under the contract from the amount paid  
to the penalized contractor. The public entity would  
be required to reimburse underpaid workers with the  
amounts retained. A public entity could adopt rules  
for reimbursement.

A worker would have the right to sue the contractor or  
subcontractor if the reimbursed amount were less than  
the determined prevailing wage. Under such a suit, a  
contractor or subcontractor could not use as a defense

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that the worker voluntarily accepted a lower wage than the determined prevailing wage.

Any contractor, subcontractor, or worker aggrieved by a public entity decision would be entitled to judicial review by trial de novo and attorney's fees and court costs under a favorable court ruling. Agents and employees of a public entity could not be held liable under the bill unless they acted in bad faith.

A contractor could withhold from any future payments due to a subcontractor any amount withheld from the contractor by a public entity for the subcontractor's violations of this law.

SUPPORTERS  
SAY:

CSHB 430 would protect workers and public agencies that hire contractors. The current law makes it difficult to collect from contractors who pay workers less than the prevailing wage. Raising the penalty for contractors who pay lower wages and providing a mechanism to collect the balance of those wages would ensure that workers are compensated as required under the law. The bond posted by employers to cover wages is sometimes inadequate to protect workers and public agencies.

The \$60 penalty would provide an appropriate incentive to comply with the wage law. The numerous violations under the current law prove that the penalty is inadequate.

Provisions in the bill would ensure contractors their due process right to appeal public entity decisions and protect them from liability if a public entity failed to determine the prevailing wage. The bill would also ensure workers' rights of appeal.

OPPONENTS  
SAY:

This bill would unduly burden businesses, especially the small or new contractors trying to get off the ground. A mechanism already exists for ensuring that public-contract employees are paid. Each employer under a private contract must provide a bond to cover wages. Repeal of the penalty law would be a better alternative; in any event, the penalty should not be raised. The \$10 penalty provides a sufficient deterrent, especially considering the provisions in the bill regarding collection of the balance of wages owed.

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OTHER:  
OPPONENTS:  
SAY:           The \$60 penalty is too low to cover administrative costs involved in pursuing violators. If the penalty cannot be raised, the law should at least allow cities and other government entities to investigate complaints.

NOTES:           The committee substitute increased the penalty to \$60, added protections from liability if a public entity fails to set a prevailing wage and deleted a provision in the original version barring a contractor in violation of the law from entering into another contract.

A related bill, SB 2826 by Heflin, would repeal the law requiring that a prevailing wage be paid to workers under public contracts. The bill was referred to the House State Affairs Committee on March 30.